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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,429	01/27/2004	Bradley Arlen Didion	Didion.1136	1528
24038	7590	11/17/2006	EXAMINER	
MARTIN & ASSOCIATES, LLC P O BOX 548 CARTHAGE, MO 64836-0548			MILLER, BENA B	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/765,429

Applicant(s)

DIDION, BRADLEY ARLEN

Examiner

Bena Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-16,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-16,24 and 25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5-7, 9-11 and 13-15 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hamalainen (US Patent 1,142,418) in view of Wheeler (US Patent 6,272,758).

Hamalainen teaches in the figures most of the elements of the claimed invention, including a first substantially flat portion (19; It should be noted that the Examiner takes the position that the width is less than the length.), a second substantially flat portion (19; It should be noted that the Examiner takes the position that the width is less than the length.), a connecting portion (10 and 11; It should be noted that the claims does not require the first, second and third axes to be in a straight line in the same plane and therefore, the first, second and third axes of Hamalainen are in a "straight line", as broadly recited, as seen in fig. 2), the connecting portion extending above the first plane (It should be noted that arms 19 are bolted between plates 10 and 11 and therefore, the plates, i.e., connecting portion 10 and 11, extends above the first plane), at least one hole (fig.6), a measurement scale (fig.1) and at least one tapered edge (fig. 6).

However, Hamalainen fails to teach at least one tapered slot that opens to an edge of the first and second portions. Wheeler teaches in the figures a layout tool having at

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least one tapered slot that opens to an edge of the tool as seen in figure 4B. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate at least one tapered slot as suggested by Wheeler in the tool of Hamalainen for the purpose of providing accuracy for certain measurements.

Claims 3, 4 and 12 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Hamalainen in view of Wheeler as applied to claims 1 and 7 above, and further in view of Premo (US Patent 2,579,857).

Hamalainen and Wheeler teach most of the elements of the claimed invention, except for a plurality of different size holes. Premo teaches in the figures a tool having a plurality of different size holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a plurality of different size holes as suggested by Premo in the tool of Hamalainen and Wheeler for the purpose of providing accuracy for certain measurements.

Claims 1-7, 9-16, 24 and 25 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US Patent 4,499,666) in view of Wheeler (US Patent 6,272,758) and Premo (US Patent 2,579,857).

Smith teaches in the figures most of the elements of the claimed invention, including a first substantially flat portion (90 and 92, fig.5; It should be noted that the Examiner takes the position that the width is less than the length.), a second substantially flat portion (90 and 92, fig. 5; It should be noted that the Examiner takes the position that the width is less than the length.), a connecting portion (52; It should be noted that the claims does not require the first, second and third axes to be in a straight

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line in the same plane and therefore, the first, second and third axes of Smith are in a "straight line", as broadly recited, as seen in fig. 2), a measurement scale (fig.5) and at least one tapered edge (fig. 5). However, Smith fails to teach at least one tapered slot that opens to an edge of the first and second portions, the connecting portion extending above the first plane, at least one hole and a substantially transparent plastic first portion, second portion and connection portion.

Wheeler teaches in the figures a layout tool having at least one tapered slot that opens to an edge of the tool as seen in figure 4B and that is well known for a connection portion (48 and 52) to extend above a first plane. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate at least one tapered slot as suggested by Wheeler in the tool of Smith for the purpose of providing accuracy for certain measurements. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the connecting portion of Smith extend above a first plane as suggested by Wheeler in the tool of Smith for the purpose of providing accuracy for certain measurements.

Premo teaches in the figures a tool having a plurality of different size holes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a plurality of different size holes as suggested by Premo in the tool of Smith for the purpose of providing accuracy for certain measurements.

At the time the invention was made, it would have been an obvious matter of design choice to persons of ordinary skill in the art to have the first portion, second portion and connection portion formed by a substantially transparent plastic. One of

ordinary skill in the art, furthermore, would have expected the tool of Smith and applicant's invention, to perform equally well with the claimed substantially transparent plastic because both the claimed device and Smith would perform the same function of providing accuracy for certain measurements.

Therefore, it would have been prima facie obvious to modify the device of Smith to obtain the invention specified in claim 16 because such modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Smith.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

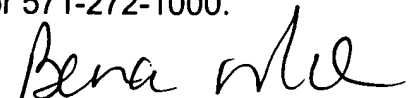
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Bena Miller
Primary Examiner
Art Unit 3725

bbm
November 08, 2006